

JAN 19 2018

A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii's collective
2 bargaining in public employment law, chapter 89, Hawaii Revised
3 Statutes, was enacted to promote labor management harmony in the
4 public sector by:

5 (1) Establishing guidelines for employment relations
6 relating to wages, hours, and working conditions;

7 (2) Providing a method for dealing with disputes and work
8 stoppages; and

9 (3) Maintaining a favorable political and social
10 environment.

11 The legislature further finds that the policy to promote
12 harmonious and cooperative relations between government and its
13 employees rests on the right of public employees to organize for
14 the purpose of collective bargaining in accordance with article
15 XIII, section 2, of the Constitution of the State of Hawaii.

16 The legislature also finds that changes in federal
17 constitutional law could have a major impact on public employee



1 collective bargaining in Hawaii. In *Friedrichs v. California*
2 *Teachers Ass'n, et al.*, 2013 WL 892547 (D. Cal. C.D. 2013),
3 *aff'd* 204 WL 10076847 (Mem.) (9th Cir. 2014), *aff'd* 136 S.Ct.
4 1083 (Mem.), 194 L.Ed. 2d 255 (2016) the petitioners had asked
5 the United States Supreme Court to overrule *Abood v. Detroit Bd.*
6 *of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52 L.Ed.2d 261 (1977)
7 (allowing public sector agency fees). An equally-divided United
8 States Supreme Court upheld the status quo established in the
9 *Abood* case. Many commentators considered that, but for the
10 sudden death of supreme court justice Antonin Scalia, *Friedrichs*
11 would have overruled *Abood*.

12 In June 2017, the petitioner in *Janus v. American Fed'n of*
13 *State, County, and Mun. Employees, Council 31*, 851 F.3d 746 (7th
14 Cir. 2017), *cert. granted*, 138 S.Ct. (Mem), 198 L.Ed. 2d 780
15 (2017) again asked the United States Supreme Court to overrule
16 *Abood*. The court has accepted the case, and a decision is
17 expected by the end of June 2018. Most commentators again
18 expect that *Abood* will be overruled, and traditional agency fees
19 will be banned.

20 The legislature finds that should the United States Supreme
21 Court strike down laws requiring the payment of union dues by



1 public sector employees, such a ruling would fundamentally
2 undermine the legislature's consistent efforts to bar "free
3 riders," and ensure labor management peace. Furthermore, not
4 only would such a ruling undercut the collective bargaining
5 representative's ability to collect resources from its
6 bargaining unit, it would greatly diminish public employees'
7 ability to negotiate with management and cause government to
8 lose the advantages envisioned under the collective bargaining
9 in public employment law.

10 The purpose of this Act is to ensure that public employees
11 are able to effectively bargain collectively with their public
12 employers by establishing a mechanism, consistent with the
13 United States Constitution, that will provide exclusive
14 bargaining representatives with the resources necessary to
15 adequately represent public employees and will remove economic
16 incentives to "free ride" so that Hawaii law will not be biased
17 for or against employee membership in the bargaining unit's
18 exclusive representative.

19 SECTION 2. Section 89-1, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



1 "(b) The legislature declares that it is the public policy
2 of the State to promote harmonious and cooperative relations
3 between government and its employees and to protect the public
4 by assuring effective and orderly operations of government.

5 These policies are best effectuated by:

6 (1) Recognizing the right of public employees to organize
7 for the purpose of collective bargaining;

8 (2) Requiring public employers to negotiate with and enter
9 into written agreements with exclusive representatives
10 on matters of wages, hours, and other conditions of
11 employment, while, at the same time, maintaining the
12 merit principle pursuant to section 76-1; ~~[and]~~

13 (3) Enabling exclusive representatives to maintain
14 financial viability and organizational capacity, and
15 the ability to effectively represent public employees;
16 and

17 ~~[(3)]~~ (4) Creating a labor relations board to administer
18 the provisions of chapters 89 and 377."

19 SECTION 3. Section 89-2, Hawaii Revised Statutes, is
20 amended by amending the definition of "exclusive representative"
21 to read as follows:



1 "Exclusive representative" means the employee organization
2 certified by the board under section 89-8 as the collective
3 bargaining agent to represent all employees in an appropriate
4 bargaining unit [~~without discrimination and without regard to~~
5 ~~employee organization membership~~]."

6 SECTION 4. Section 89-3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§89-3 Rights of employees. Employees shall have the
9 right of self-organization and the right to form, join, or
10 assist any employee organization for the purpose of bargaining
11 collectively through representatives of their own choosing on
12 questions of wages, hours, and other terms and conditions of
13 employment, and to engage in lawful, concerted activities for
14 the purpose of collective bargaining or other mutual aid or
15 protection, free from interference, restraint, or coercion. An
16 employee shall have the right to refrain from any or all of such
17 activities, except for having a payroll deduction equivalent to
18 regular dues remitted to an exclusive representative or
19 charitable organization as provided in [~~section~~] sections 89-3.5
20 and 89-4."



1 SECTION 5. Section 89-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§89-4 Payroll deductions.** (a) Upon receiving from an
4 exclusive representative a written statement specifying the
5 amount of regular dues required of its members in the
6 appropriate bargaining unit, the employer shall deduct this
7 amount from the payroll of every member employee in the
8 appropriate bargaining unit, and remit the amount to the
9 exclusive representative. Additionally, the employer shall
10 deduct an amount equivalent to the regular dues from the payroll
11 of every nonmember employee in the appropriate bargaining unit,
12 except for employees who object under section 89-3.5, and shall
13 remit the amount to the exclusive representative; provided that
14 the deduction from the payroll of every nonmember employee shall
15 be made only for an exclusive representative which provides for
16 a procedure for determining the amount of a refund to any
17 employee who demands the return of any part of the deduction
18 which represents the employee's pro rata share of expenditures
19 made by the exclusive representative for activities of a
20 political and ideological nature unrelated to terms and
21 conditions of employment. If a nonmember employee objects to



1 the amount to be refunded, the nonmember employee may petition
2 the board for review thereof within fifteen days after notice of
3 the refund has been received. The employer shall deduct an
4 amount equivalent to the periodic dues and initiation fees from
5 the payroll of every employee who objects under section 89-3.5
6 in a bargaining unit with a published policy that so requires
7 and shall remit the amount to the charitable organization
8 designated in writing by the employee who objects under section
9 89-3.5. If an employee organization is no longer the exclusive
10 representative of the appropriate bargaining unit, the deduction
11 from the payroll of members ~~[and]~~, nonmembers, and employees who
12 object under section 89-3.5 shall terminate.

13 (b) The employer shall, upon written authorization by an
14 employee, executed at any time ~~[after the employee's joining an~~
15 ~~employee organization]~~, deduct from the payroll of the employee
16 the amount of membership dues, initiation fees, representation
17 or service fees, group insurance premiums, ~~[and]~~ or other
18 association benefits, and shall remit the amount to the employee
19 organization designated by the employee.

20 (c) The employer shall continue all payroll assignments
21 authorized by an employee prior to July 1, 1970, and all



1 assignments authorized under subsection (b) until notification
2 is submitted by an employee to discontinue the employee's
3 assignments.

4 (d) The exclusive representative may establish:

5 (1) Dues, rates, or charges to support its activities and
6 other programs it chooses to provide to its members;

7 and

8 (2) Rates or charges for services or other programs it
9 chooses to provide to nonmembers and employees who
10 object under section 89-3.5.

11 (e) The public employer shall be entitled to rely on, and
12 shall not be liable for accurately implementing, reports of
13 employee deductions supplied by the exclusive representative.
14 Any challenge to rates or charges for services shall be within
15 the exclusive original jurisdiction of the board as a prohibited
16 practice."

17 SECTION 6. Section 89-8, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The employee organization which has been certified by
20 the board as representing the majority of employees in an
21 appropriate bargaining unit shall be the exclusive



1 representative of all employees in the unit. As exclusive
2 representative, it shall have the right to act for and negotiate
3 agreements covering all employees in the unit and shall be
4 responsible for representing the interests of all such employees
5 without discrimination and without regard to employee
6 organization membership[-], except that in the grievance-
7 arbitration procedure, it need not represent employees who do
8 not pay reasonable costs of representation. Any other provision
9 herein to the contrary notwithstanding, whenever two or more
10 employee organizations which have been duly certified by the
11 board as the exclusive representatives of employees in
12 bargaining units merge, combine, or amalgamate or enter into an
13 agreement for common administration or operation of their
14 affairs, all rights and duties of such employee organizations as
15 exclusive representatives of employees in such units shall inure
16 to and shall be discharged by the organization resulting from
17 such merger, combination, amalgamation, or agreement, either
18 alone or with such employee organizations. Election by the
19 employees in the unit involved, and certification by the board
20 of such resulting employee organization shall not be required."



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval.

4

INTRODUCED BY: _____

Jim
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S.B. NO. 2369

Report Title:

Public Employment; Collective Bargaining

Description:

Amends collective bargaining law to ensure that exclusive bargaining representatives retain the resources necessary to adequately represent public employees and remove economic incentive to free ride.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

